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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

BROUILLETTE, G

ART UNIT

PAPER NUMBER

1502

DATE MAILED: 02/05/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>08/855,779</b>	Applicant(s) <b>MODI</b>
	Examiner <b>D. Gabrielle Phelan</b>	Group Art Unit <b>1502</b>

Responsive to communication(s) filed on \_\_\_\_\_.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-41 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-41 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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**DETAILED ACTION**

Acknowledgement is made of the Information Disclosure Statement filed September 05, 1997. Note that the documents listed were not received with the IDS, thus the EPO document, not readily accessible to the examiner, has not been considered.

***Claim Rejections - 35 USC § 112***

1. Claims 1-41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 includes language directed to "aryl alkyl, alkyl aryl", however, there is no description as to what comprises the "aryl". Moreover, the specification provides no guidance as to the description of "aryl".
2. Claims 1-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite in the recitation of "...wherein the alkyl moiety is a straight or branch chain having 2-6 carbon atoms, C3-C7 alkyl..." How does a straight or branch chain having 3-6 carbon atoms differ from C3-C6 alkyl? Clarification is requested.

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It is further noted in claim 1 that the phrase "...wherein the ratio of the hydrophilic portion to the hydrophobic portion of the polymer is from about 2:1 to 1000:1", as there is no antecedent basis for "the hydrophilic portion".

In claim 3, it is suggested to correct the spelling of "switterionic."

Claim 5 is indefinite in the recitation of "lower alkanols", as lower is a relative term lacking further definition.

Claim 8 is rejected in the use of improper Markush language. It is suggested to amend to "...selected from the group consisting of."

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Angerer (USPN 4,902,733).

Angerer discloses a composition comprising a rheology modifier which is a nonionic, water-soluble 3-alkoxy-2-hydroxypropyl hydroxyethylcellulose polymer. The alkyl moiety may be a straight or branched chain alkyl group having 6 to 24 carbon atoms. The composition may additionally comprise surfactants, viscosifying agents and solvents such as propylene glycol. See

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col 1, l 65 through col 2, l 12; col 3, l 43 through col 4, l 35. All of the limitations of the above listed claims are met by Angerer. The phrase "a personal care composition" provides no patentable distinction as all components of the composition are taught by Angerer.

5. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Sau (USPN 4,904,772).

Sau discloses a composition comprising a rheology enhancer which is a nonionic water-soluble 3-alkoxy-2-hydroxypropyl hydroxyethylcellulose polymer. The composition may also comprise surfactants and solvents such as water. See col 2, l 1-8 and l 42-62; col 3, l 5-13 and 44-68; col 7, l 3-13. All of the above listed claims are met by Sau. The phrase "a personal care composition" provides no patentable distinction as all components of the composition of the above listed claims are taught by Sau.

6. Claims 1, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by t'Sas (USPN 4,845,207).

t'Sas discloses a composition comprising 3-alkoxy-2-hydroxypropyl hydroxyethylcellulose wherein the alkyl moiety is a straight or branched chain alkyl group containing 1 to 10 carbon atoms. The composition may include other components such as plasticizers, solvents, preservatives etc. See col 2, l 9-26 and col 4, l 16-23. All of the limitations of the above listed claims are met by t'Sas. The phrase "a personal care composition" provides no patentable distinction as all components of the composition of the above listed claims are taught by t'Sas.

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***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 11-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Angerer or Sau.

Either of Angerer or Sau disclose compositions comprising 3-alkoxy-2-hydroxypropyl hydroxyethylcellulose as described above. Not disclosed are a shampoo, conditioner, sun care product, shower gel, soap, etc. However, it would have been obvious to one of ordinary skill in the art to use the compositions of either Angerer or Sau in the above listed formulations as it is well known in "personal care" industry to utilize rheological agents, surfactants, solvents, etc. No patentable distinction is seen in the use of a old composition in a "personal care" setting lacking any evidence of criticality attributed thereto.

9. Claims 14-18 and 21-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over t'Sas.

t'Sas discloses a composition comprising 3-alkoxy-2-hydroxypropyl hydroxyethylcellulose as described above. Not disclosed are a shampoo, conditioner, sun care product, shower gel, soap, etc. However, it would have been obvious to one of ordinary skill in the art to use the composition of t'Sas in the above listed formulations as it is well known in "personal care"

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industry to utilize rheological agents, surfactants, solvents, etc. No patentable distinction is seen in the use of a old composition in a “personal care” setting, lacking any evidence of criticality attributed thereto.

No claim is currently allowed.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **D. Gabrielle Phelan, Ph.D.** whose telephone number is (703) 308-0756.

The examiner can normally be reached on Monday through Thursday from 7:00 AM to 4:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached at 703-308-2927. The fax phone number for this Art Unit is 703-305-5408.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thurman.page@uspto.gov].

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All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is 703-308-2351.

dgp

January 29, 1998

  
D. GABRIELLE PHELAN, PhD  
PRIMARY EXAMINER  
GROUP 1500